PUBLIC PROSECUTOR v. MOHAMED ALI BIN SANI

[R.Cr.J. (Ajaib Singh J.) July 8, 1977]
[Seremban — Criminal Revision No. 4 of 1977]

Dangerous Drugs — Possession of light brown powder containing heroin — "Amount cannot be determined due to insufficient sample" — Whether charge was groundless — Dangerous Drugs Ordinance 1952, s. 12(2) & (3) — Criminal Procedure Code (F.M.S. Cap. 6), s. 173(g).

The accused was charged for possession of "0.10 gms of light brown powder containing heroin the amount cannot be determined due to insufficient sample", and had thereby committed an offence under section 12(2) of the Dangerous Drugs Ordinance, 1952. The first prosecution witness, the chemist said that there was some heroin in the powder but he could not determine the quantity because of insufficient sample. At this stage the learned president discharged the accused under section 173(g) of the Criminal Procedure Code on the ground that the charge was groundless.

Held: the learned president was in error when he discharged the accused without hearing all the witness for the prosecution. On the evidence of the chemist there was sufficient evidence to show that there was heroin in the light brown powder the possession of which constituted an offence under section 12(2) of the Dangerous Drugs Ordinance 1952.

[Editorial Note: Reference may be made to *R.* v. *Carver* [1978] 2 W.L.R. 872 when the appellant was found to be in possession of a filter and a wooden box; scientific examination of the filter produced a reaction indicating the presence of not less than 20 microgrammes of cannabis resin and 2 milligrammes were recovered by scrapping the hinges and cracks in the lid of the box. The Court of Appeal quashed his conviction and held that "... if the quantity of the drug found is so minute as in the light of common sense to amount to nothing or... that it is not usable in any manner which the Misuse of Drugs Act 1971 was intended to prohibit, then a conviction for being in possession of the minute quantity of the drug could not be justified."]

Case referred to:-

(1) *R.* v. *Worsell* [1970] 1 W.L.R. 111.

CRIMINAL REVISION.

Razalli bin Hassan (Deputy Public Prosecutor) for the Public Prosecutor.

S. Periasamy for the accused.

Ajaib Singh J.: The accused in this case was charged as follows:—

"That you on May 22, 1976 at about 10.00 a.m. at Jalan Temiang/Jalan Templer, Seremban, in the District of Seremban, in the State of Negeri Sembilan, not being a person authorised under the Dangerous Drugs Ordinance 1952 did have in your possession dangerous drugs, to wit 0.10 grams of light brown powder containing heroin the amount cannot be determined due to insufficient sample, and that you have thereby committed an offence under section 12(2) of the Dangerous Drugs Ordinance 1952 and punishable under section 12(3) of the said Ordinance."

After hearing the evidence of the first prosecution witness the learned president discharged the accused on the ground that the charged was groundless. The chemist was the first witness and in his evidence he said that he examined two sticks of Lucky Strike cigarettes, one match box containing some match sticks and one plastic straw tube containing 0.10 gm. of a light brown powder. He said that he found the light brown powder to contain heroin but he did not detect any dangerous drugs in the cigarettes. He said that the quantity of heroin found in the light brown powder could not be determined because of insufficient sample. He said that only a qualitative analysis was done which showed that the light brown powder contained heroin. He said that there was some heroin in the powder but he could not determine the exact quantity. He said that if there had been 1 m.g. of the sample it would have been possible to determine the quantity. However he said that this was not a case where there was no heroin at all. He had come to this conclusion by a qualitative analysis to determine that the light brown powder contained heroin and he said that the heroin could otherwise not be seen by the naked eye. He did not extract the heroin from the powder as he was not able to do so in view of the amount. At this stage the learned president discharged the accused under section 173(g) of the Criminal Procedure Code on the ground that the charge was groundless. Subsequently the learned president forwarded the record of the proceedings to the High Court seeking a ruling whether his decision was correct and proper in the circumstances of the case. In his covering letter to the court he referred to the case of *R.* v. *Worsell*[1] and stated that he had discharged the accused on the authority of this case. He said that the chemist did a qualitative analysis only when he found the light brown powder to contain heroin. The chemist did not do a quantitative analysis due to insufficient sample. Although there was some heroin the chemist did not know the exact amount of the drug which he said could not be seen with the naked eye nor was he able to extract the heroin from the powder. He also said that by looking at the light brown powder it could not be said that it contained any drug at all or its quantity.

The learned president compared this case with the case of *R.* v. *Worsell* and came to the conclusion that there was insufficient heroin in order to base the charge under the Dangerous Drugs Ordinance 1952. With respect I must say that the case of *R. v. Worsell* is not on all fours with the present case. In that case the charge against the accused and two other persons was that they had in their possession a certain drug *to wit* a few droplets of diamorphine (heroin). A hypodermic syringe and a small tube which contained a few droplets of diamorphine were found under the dashboard of the defendant's motor car and according to the evidence adduced the tube appeared to be entirely empty. There was nothing in it which was visible to the human eye. It was empty to all intents and purposes. However in the present case there was some heroin in the light brown powder although it was insufficient to determine its extent. The chemist said that a qualitative examination showed that there was some heroin in the light brown powder. In my view the learned president was in error when he discharged the accused without hearing all the witnesses for the prosecution. In so far as the drug is concerned I am of the view that on the evidence of the chemist there was sufficient evidence to show that there was heroin in the light brown powder the possession of which constituted an offence under section 12(2) of the Dangerous Drugs Ordinance 1952. Accordingly I ordered that the order of the learned president be set aside and that the case be re-tried.

Re-trial ordered.

Solicitors: *Nahappan, Muthu & Peri.*